

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

KLAMATH-SISKIYOU WILDLANDS
CENTER,

Civil No. 04-3077-CO
O R D E R

Plaintiff,

vs.

MEDFORD DISTRICT OF THE BUREAU
OF LAND MANAGEMENT,

Defendant.

AIKEN, Judge:

Magistrate Judge Cooney filed his Findings and Recommendation on July 15, 2005. The matter is now before me pursuant to 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b). When a party objects to any portion of the Magistrate's Findings and Recommendation, the district court must make a de novo determination of that portion of the Magistrate's report. 28 U.S.C. § 636(b)(1)(B); McDonnell Douglas Corp. v. Commodore Business Machines, 656 F.2d 1309, 1313 (9th Cir. 1981), cert. denied, 455 U.S. 920 (1982).

Plaintiff has timely filed objections. I have, therefore, given the file of this case a de novo review. Regarding the first issue raised in the Findings and Recommendation, research

1 logging, I find that the defendant adequately supported its
2 contention that the proposed salvage logging in the research area
3 is consistent with LSR objectives. I agree with Judge Cooney
4 that the defendant gave thorough consideration to whether the
5 proposed salvage would comply with the NWFP, and articulated its
6 analysis in detail. Specifically, the court notes that the FEIS
7 contains a table which addresses compliance with the LSR salvage
8 guidelines and specifically Standard and Guideline #3 (the
9 retention of snags). The FEIS shows that the largest, hardest
10 snags will be retained and retention will emphasize both pine and
11 douglas fir as they are the most persistent and have greater
12 value for wildlife. The FEIS addresses the number of snags that
13 will be retained and sets forth a thorough snag retention
14 schedule.

15 This is very different from the record before this court in
16 Oregon Natural Resources Council v. Brong et al., civ. no. 04-
17 693-CO. For example, in Brong, this court found that the BLM
18 would average snag retention in salvaged and non-salvaged areas
19 to meet snag retention levels. Here, there is no allegation by
20 the defendant that snag retention levels will be met by
21 averaging. The defendant here did not act in an arbitrary and
22 capricious fashion regarding proposed salvage logging in research
23 areas.

24 Next, Judge Cooney examined defendant's proposed logging in
25 unsuitable woodlands. I agree with Judge Cooney's finding that,
26 unlike the record in Brong, the defendant here addressed
27 plaintiff's mitigation concerns with specific data from the
28 record. Judge Cooney held that the defendant demonstrated

1 compliance with the RMP's mitigation requirements, and that Brong
2 was distinguishable because of defendant's proposed mitigation
3 measures and the "extensive study and analysis supporting those
4 measures." See Findings and Recommendation, p. 24-26. I agree
5 that the defendant's actions here do not rise to the level of
6 arbitrary and capricious.

7 Finally, Judge Cooney examined defendant's proposed salvage
8 logging in a deferred watershed and found that the defendant
9 adequately concluded that the proposed activities were unlikely
10 to contribute to the variables that led to the deferred status.
11 I agree with Judge Cooney's findings; specifically, that the
12 level of surface disturbance will be minimal due to high soil
13 infiltration capacity, no new permanent road construction, and
14 use of helicopter logging as the sole means of logging. Unlike
15 the record in Brong, the defendant's conclusions here were
16 supported with a thorough analysis of the cumulative effects of
17 the project, and a thorough analysis of the mitigation measures
18 and restoration measures designed to minimize the impacts to the
19 project and other detrimental effects of the fire. I find that
20 Judge Cooney's analysis and recommendation is correct and agree
21 that the defendant was not arbitrary and capricious.

22 In conclusion, I ADOPT the Magistrate's Findings and
23 Recommendation (doc. 55) that plaintiff's motion for summary
24 judgment (doc. 17) is denied, and defendant's motion to dismiss,
25 or in the alternative for summary judgment (doc. 24), is granted.
26 Further, plaintiff's motion for preliminary injunction (doc. 40)
27 is denied.

28 IT IS SO ORDERED.

1 Dated this 3 day of October 2005.

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6 Ann Aiken
7 United States District Judge
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